

Family of Joseph Jose sued after a guest who'd been drinking heavily beat him to death. But Mexican hotel company Palace Resorts Inc. argued Miami was the wrong place for a legal dispute.

By Raychel Lean | May 07, 2019 at 01:22 PM

Gary E. Davidson of Diaz Reus & Targ in Miami warded off two attempts to dismiss a wrongful death lawsuit against Mexican hotel conglomerate Palace Resorts Inc., after a guest from Texas was beaten to death by a drunk man at one of its hotels in Cancun.

Palace Resorts argued Miami was an improper venue for the suit, and claimed its forum selection clause mandated legal action in Mexico. But Miami-Dade Circuit Judge Jennifer Bailey disagreed.

In the early hours of March 14, 2014, a security guard found Joseph Jose face down on a concrete walkway at the Moon Palace Golf & Spa Resort while Mexican citizen Gabriel Trinidad Jimenez sat on top of him, smashing his head in the concrete. Jose was already dead — overpowered by cranial fractures and contusions, according to the wrongful death lawsuit his family filed in 2016.

Jimenez was later convicted. He had been a guest at the hotel but had spent the night working for a Mexican PepsiCo distributor, sponsoring an event at the resort's nightclub. The company had paid for his stay and expenses, and presented him with an award that night, according to the complaint.

Jose also went to the nightclub as part of a guided tour, but never made it back to his room. Plaintiff's lawyer Davidson said he plans to piece together what happened using video footage recorded in the hours before the attack.

Jimenez was convicted of murder and imprisoned in Mexico. But Jose's family also blamed Moon Palace, which was no stranger to violent incidents, according to the lawsuit. The complaint claimed staff should have controlled Jimenez's alcohol consumption and escorted him to his room, but instead left him to wander the resort "with deadly consequences."

"This is a very tragic situation," Davidson said. "This family has lost a young man and a very successful and wonderful human being. It's torn the family apart."

The suit also pointed the finger at PepsiCo and four affiliates for allegedly failing to keep staff in check. Employees weren't allowed to get drunk, according to the complaint, yet the soda distributor hosted an all-day drinking event that saw Jimenez get so drunk he couldn't remember what happened. That claim settled confidentially.

Defense attorneys Trevor G. Hawes and David Caballero of Cole, Scott & Kissane in Jacksonville and Miami did not immediately respond to requests for comment, but Palace Resorts has denied any wrongdoing or liability. It filed two motions to dismiss, arguing that the case was blocked by a forum selection clause and didn't belong in Miami.

But Bailey wasn't convinced. The judge ruled the plaintiff had never seen a copy of the forum selection clause. She also found Palace Resorts has actively expanded outside its Mexico base, had created corporate headquarters in Florida and was getting many of its customers from the U.S. The judge also criticized "vague and unintelligible" testimony for the defense.

"The court was troubled by the lack of transparency in many of the answers provided by the defendants' witnesses and failure to answer basic questions," Bailey wrote.

The court based its ruling on a 2013 Florida Supreme Court decision, *Cortez v. Palace Resorts* — another case Davidson brought against the same defendant. In that suit, Davidson's California client sued Palace Resorts after being raped at the same hotel. The courts supported the defense's claim that Miami was an inconvenient forum, until Florida justices reversed the dismissal and changed state law.

Davidson said he'll seek millions in economic damages, as Jose was a young, well-paid business executive.

"He could have been running one of the top Fortune 500 companies within a decade, and it's all gone," Davidson said. "But the family would be delighted to not receive a penny if they could bring their father and husband back."